IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

NOTICE OF MOTION NO.2776 OF 2004
IN
APPEAL NO.587 OF 2004
IN
SUMMONS FOR JUDGMENT NO.226 OF 1997
IN
SUMMARY SUIT NO.350 OF 1997

1. M/s.Radha Textile Agency & anr. ..Appellants

v/s.

1. Sureshchand Gangaram Arora
& anr. .. Respondents

Mr.S.P.Kanuga i/by Mr.M.V.Aiya for appellants.

Mr.S.K.Jain for respondent No.1.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 24th September, 2004

P.C.

Heard Mr.S.P.Kanuga, the learned counsel for the appellants and Mr.S.K.Jain, the learned counsel for respondent No.1.

2. It is true that delay in filing the appeal is not 12 days as stated by the appellants-applicants but in fact, the delay is of 42 days. However, we find that though there is delay in filing the appeal, there was not lack of diligence on the part of the appellants. Immediately after the order dated 29th June, 2004 was passed, the application for obtaining the certified copy of the said order was made on 5th July, 2004. The application suffered from some defect and came to be rejected on 10th August, 2004. Then the second application dated 11th August, 2004 was made by the appellants-applicants for obtaining the certified

copy of the order dated 29th June, 2004. Incidentally, we may notice that by way of speaking to minutes, the learned motion Judge clarified the order dated 29th June, 2004 on 27th July, 2004.

3. For all these reasons, we are satisfied the delay in filing the appeal may be condoned and the inconvenience caused to the plaintiff- respondent No.1 may be compensated by award of reasonable cost.

4. Accordingly, subject to the appellants' paying cost of Rs.5000/- to the first respondent (original plaintiff) by 28th September, 2004, office is directed to post the appeal for admission on 29.9.2004.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)